Writ Petition no. 591(M/B) OF 2002

Khairati Lal and others ------ Petitioners

Versus

State of Uttaranchal
And others ---------- Respondents

Hon'ble Irshad Hussain J.
Hon'ble M.M. Ghildiyal J.

(Delivered by Hon'ble M.M.Ghildiyal J.)

By means of this writ petition the petitioners have challenged the order of respondent no.2, Managing Director, Uttaranchal Forest Development Corporation, Dehradun ordering the transfer of the sale/auction depots of Forest Corporation outside the State of Uttaranchal.

Heard Sri Sudhir Singh learned counsel for the petitioners and Sri V.K. Singh learned counsel for the respondents no.1 and 2.

The learned counsel for the petitioners has submitted that by transferring the sale/auction depots outside the State of Uttaranchal will result to a great revenue loss to the State of Uttaranchal. Further in view of the transfer of sale/auction depots the petitioners have to pay extra tax and expenses through and outside the State in case they purchase the forest timber from the depots outside the State of Uttaranchal. The action of the respondents is highly arbitrary and detrimental to the interest of State of Uttaranchal and as such the respondents may be restrained from opening sale/auction depots of the timber outside the State of Uttaranchal.

The Forest development Corporation has filed counter affidavit. The learned counsel for the respondents has submitted that the purchase of the timber from corporation has always been done by buyers both within and outside the State. He has further submitted that the petitioners regularly participate in the auction in various timber depots of corporation and also sell timber to the parties outside the State. The petitioners want complete monopoly of timber trade of Uttaranchal so that they may get maximum profit at the cost of loss of corporation. The learned counsel for the respondents has submitted that due to sudden fall of rates as a result of

double taxes for outside buyers Uttaranchal Forest Development Corporation is suffering huge and irreparable loss. The loss incurred in sale in some of important species of timber during the financial year 2001-2002 is to the tune of Rs.9,13, 41,000.00. Considering the heavy inventory of timber in the sale depots of the Corporation and also due to drastic fall of rates of timber and due to double taxes for buyers from outside the State, it was apprehended that the Corporation may not be sustainable if drastic steps to reduce the losses were not taken. For the financial year 2001-2002 from the total sale of 116.59 crores of timber only and a gross profit of Rs. 0.31 Crore was earned by the Corporation.

In view of the above facts and considering the alarming situation the governing body of the Corporation in its meeting decided to open sale depots outside the State to sustain the Corporation in the larger public interest. The learned counsel for the respondents has submitted that during the months of September and October 2002 the Corporation sold 439.9349 cubic meters of *Chir* timber at Loni in the State of U.P. at average rate of Rs.3302 per cubic meter whereas in Uttaranchal in the financial year 2001-2002 the average price obtained by the Corporation for *Chir* timber was Rs.2170 per cubic meter and thus the Corporation has gained substantially by selling its timber outside the State of Uttaranchal.

The Uttaranchal Forest Development Corporation was established on 01.94.2001 after reorganization of the State of Uttar Pradesh. The same was created under the Local Bodies Act on the lines of U.P. Forest Corporation Act, 1974.

The Corporation is a wholly government owned corporation dedicated to the better preservation and development of forest and better exploitation of forest produce. The profits of the corporation are in truth of the State itself. The circumstances under which the forest corporation has opened its sale/auction depots outside the State of Uttaranchal is not arbitrary inasmuch as by opening the sale/auction depots out side the State of Uttaranchal the Corporation has gained substantial profit as is clear from the counter affidavit filed by the Corporation.

Hon’ble Supreme Court in the case of **U.P.Financial Corporation and others Vs. M/s Naini Oxygen & Acetylene Gas Ltd, reported in**

Judgment Today 1994(7) S.C.551 has held that in commercial matters, the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. Dealing with the issue of commercial activities the Apex Court in paragraphs no.21 and 23 of the aforesaid judgment has held as under:-

> "However, we cannot loose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is *mala fide*, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or business like it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.
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> 23. We are, therefore, of the view that this is not a matter where the High Court should have stepped in and substituted its judgment for the judgment of the Corporation, which should be deemed to know its interests better whatever the sympathies, the court had for the prosperity of the Company. In matters commercial, the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. "

The Corporation to enhance its revenue has taken a decision to sell its forest produce from the new depots opened outside the State of Uttaranchal also. In fact, no sale/auction depots of the Corporation have been transferred. In addition to the depots situated in the State of Uttaranchal a new depot has been opened outside the State of Uttaranchal. The petitioners are free to purchase timber either from the depots situated in the State of Uttaranchal or from the depots situated outside the State of Uttaranchal. The respondent no.2 considering the fact that the State of

Uttaranchal is a timber surplus State and after meeting all the requirements of the State of Uttaranchal is supplying the timber outside the State of Uttaranchal with the object of enhancing the revenue of the Corporation which is necessary for the development and growth of newly created Corporation. We find no illegality in it.

For the reasons stated above the writ petition is dismissed. No order as to costs.

(Irshad Hussain, J.) **(M.M. Ghildiyal, J.)**

June 30, 2003
MPS